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9

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                    UNITED STATES DISTRICT COURT

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                   NORTHERN DISTRICT OF CALIFORNIA

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                      SAN FRANCISCO DIVISION

13

14 RICOH COMPANY, LTD.,	Case No. C03-4669 MJJ (EMC)
15 Plaintiff,	Case No. C03-2289 MJJ (EMC)
16 vs.	**REPLY MEMORANDUM IN SUPPORT OF**
17 AEROFLEX INCORPORATED, AMI SEMICONDUCTOR, INC., MATROX	**SYNOPSYS' AND THE CUSTOMER DEFENDANTS' MOTION FOR SUMMARY JUDGMENT OF NON-INFRINGEMENT**
18 ELECTRONIC SYSTEMS LTD., MATROX GRAPHICS INC., MATROX	**(HARDWARE CELLS)**
19 INTERNATIONAL CORP., MATROX TECH, INC., AND AEROFLEX COLORADO	**[SUMMARY JUDGMENT MOTION NO. 2]**
20 SPRINGS, INC.	Date: September 26, 2006
21 Defendants.	Time: 9:30 a.m. Courtroom: 11, 19th Floor Judge: Hon. Martin J. Jenkins
22	
23 SYNOPSYS, INC.,	
24 Plaintiff,	
25 vs.	
26 RICOH COMPANY, LTD.,	
27 Defendant.	

28

<u>**FILED UNDER SEAL PURSUANT TO PROTECTIVE ORDER**</u>
<u>**REDACTED PUBLIC VERSION**</u>

HOWREY LLP

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REPLY ISO SUMMARY JUDGMENT OF NON-INFRINGEMENT
(MOTION NO.2)
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I.   INTRODUCTION

Ricoh's opposition to Defendants'[1] Summary Judgment Motion No. 2 entirely misses the mark, and as is typical builds up and tears down straw man arguments that are not relevant to the resolution of this Motion, and in fact not even raised in the moving papers. For example, Ricoh repeatedly asserts that an alleged one-to-one correspondence of hardware cells to macros is a significant issue, and in fact, devotes several pages discussing this issue. This issue, however, was not raised in the moving papers.[2] Likewise, there is no dispute that the Target Technology libraries contain primitives that are more complex than one gate. For example, as Ricoh points out, Dr. Casavant describes a one bit adder, as found in some Target Technologies libraries, which is a building block for an adder implementation. However, Ricoh and Dr. Soderman do not dispute that a one bit adder is not a cell that is selected for purposes of the accused designs as corresponding to a specified definition. Indeed, the patent claims and describes as an inventive feature that "rather than generating every required hardware cell from scratch, the system draws upon a library of previously designed, tested and proven hardware cells of various types and of various functional capabilities with a given type." Ex. 1 at 5:16-20. It is undisputed that the accused system does not use such "hardware cells" but rather, for each selected implementation, builds up from the primitives in the technology library, "a hardware cell" as described in the patent. Thus, there are no stored hardware cells.

Ricoh has not raised a single disputed issue of material fact with regard to any of these issues either. Summary judgment of noninfringement should be granted.

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[1] As used herein, "Defendants" refers collectively to Synopsys and the Customer Defendants.

[2] Even if Ricoh is right, however, that more than one hardware cell can be selected, that does not change the outcome of this Motion. In fact, for purposes of this reply, Defendants will assume Ricoh is correct on this issue. As discussed below, summary judgment of noninfringement is still appropriate even if more than one hardware cell can be selected.

1   **II.   ARGUMENT**

2   **A.   Hardware Cells Must Correspond To Functions To Be Carried Out By The**

3   **Definitions**

4   The irony here is that Ricoh previously asserted the same reading of element B – although in

5   slightly different words – that Defendants assert here. Specifically, during the claim construction

6   proceedings, Ricoh argued that element B should be construed as '"[p]lacing in computer memory a

7   library of cell information that describes hardware cells capable of performing the different

8   architecture independent actions and conditions placed in the library of definitions,' where the term

9   'hardware cells' should be defined as 'previously designed circuit components or structure that have

10   specific physical and functional characteristics used as building blocks for implementing an ASIC to

11   be manufactured.'" Ex. 5 at 25:5-11 (emphasis added). In other words, Ricoh agreed that the

12   "hardware cells" stored in element B must be capable of performing the desired actions and conditions.

13   Moreover, Ricoh clearly described the cells as "previously designed circuit components" that are used

14   as "building blocks" for implementing an ASIC.[3]

15   Notwithstanding this, Ricoh now vehemently argues that Defendant's proposed definition,

16   consistent with Ricoh's previous assertion, is wrong. In the assertion during the claim construction

17   proceeding, Ricoh relied on the specification of the patent. Now, Ricoh relies almost exclusively on

18   extrinsic evidence for its skewed "infringement" claim construction argument.

19   As intrinsic evidence, Ricoh relies on the allegation (which Defendants do not necessarily agree

20   with, but will not dispute for purposes of this motion) that the macros described in the '432 patent

21   include a "NEGATE(A)" macro which would typically be implemented by a primitive cell.[4] Provided,

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24   [3] An alternative and acceptable formulation of Defendants construction consistent with this language could be that "hardware cells" are "previously designed circuit components, such as adders, counters, registers, and comparators, that correspond to definitions of actions or conditions.

25   [4] Notably, Dr. Soderman's opinion regarding the NEGATE macro is inconsistent with Ricoh's infringement theory. Dr. Soderman asserts that one would never use "anything more than a primitive cell (e.g., 'inverter' gate cell, one-input NAND gate cell, NOR gate cell, etc.) to perform the NOT logic function that corresponds to the NEGATE macro." Soderman Decl. ¶ 27. If that is the case, then the NEGATE macro represents an architecture-*dependent* action, since it is always associated with a particular structure. Such a macro, however, would be excluded from the scope of the '432 claims, which cover only input descriptions of architecture *independent* actions and conditions. Thus, Dr. Soderman's opinion regarding
   (Continued...)

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1 however, that the library of hardware cells contained a primitive cell that corresponded to a

2 "NEGATE(A)" macro, and therefore met this claim limitation, this is not inconsistent with

3 Defendants' position.

4   Ricoh relies on no other intrinsic evidence in support of its assertion that Defendants'

5 interpretation is somehow wrong. Instead, Ricoh relies exclusively on the extrinsic evidence,

6 including amazingly, the accused Target Technology libraries. Ricoh states that Dr. Soderman is of

7 the opinion that hardware cells have a definite meaning to one of ordinary skill in that. The Court

8 should disregard Dr. Soderman's opinions regarding how one of ordinary skill in the art would

9 interpret "hardware cells." *See* Soderman Decl. ¶¶ 16-18, 25-30. During claim construction, Ricoh

10 argued vociferously that the Court should not consider expert testimony in interpreting the '432 claims.

11 Ex. 5 at 2:5-17, 8:12-20. Having taken this position during claim construction, Ricoh cannot now

12 argue that the Court should consider the testimony of its expert regarding the proper interpretation of

13 the term "hardware cells." *See Helfand v. Gerson*, 105 F.3d 530, 534 (9th Cir. 1997) ("Judicial

14 estoppel, sometimes also known as the doctrine of preclusion of inconsistent positions, precludes a

15 party from gaining an advantage by taking one position, and then seeking a second advantage by

16 taking an incompatible position.") (quoting *Rissetto v. Plumbers and Steamfitters Local 343*, 94 F.3d

17 597, 600 (9th Cir.1996).

18   Ricoh's analysis of this claim term begins and ends here. Indeed, ironically, Ricoh claims

19 "Defendants have failed to cite a single example in the art to corroborate their restrictive interpretation

20 of the term hardware cell." Opp. at 7. Ricoh is right – Defendants rely on intrinsic evidence – and all

21 the intrinsic evidence supports Defendants' interpretation (as Ricoh acknowledged at the claim

22 construction hearing and conveniently ignores here).

23   Ricoh incorrectly argues that Defendants' interpretation of "hardware cells" improperly reads a

24 limitation from a preferred embodiment in the '432 patent into the '432 claims. First, Ricoh

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26 (...Continued)

27 the NEGATE macro results in the exclusion of a preferred embodiment from the scope of the '432 claims, which Ricoh
   repeatedly argues is improper. *See* Opp. at 24.

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1   mischaracterizes the law on claim construction. The Federal Circuit has stated that "(a) one may not

2   read a limitation into a claim from the written description, but (b) one may look to the written

3   description to define a term already in a claim limitation, for a claim must be read in view of the

4   specification of which it is a part." *Renishaw PLC v. Marposs Societa' Per Azioni*, 158 F.3d 1243,

5   1248 (Fed. Cir. 1998). Since "hardware cells" is a term that is present in claim 13, one must look to

6   the written description in the '432 specification to determine the meaning of this term. "Ultimately,

7   the interpretation to be given a term can only be determined and confirmed with a full understanding of

8   what the inventors actually invented and intended to envelop with the claim. . . . The construction that

9   stays true to the claim language and most naturally aligns with the patent's description of the invention

10 will be, in the end, the correct construction." *Id.* at 1250 (citations omitted).

11   In addition to all of the intrinsic evidence discussed in the Defendants' opening brief, including

12 the various levels of descriptions of the hardware cells, the remainder of the specification is also

13 consistent with Defendants' interpretation. "Hardware cells" is consistently described in the

14 specification as the functional components that correspond to the specified functions of the ASIC. For

15 example, the '432 specification consistently refers to "hardware cells" as "previously designed"

16 components representing the structures that will perform the action or condition described by the user:

17   • "The structural level definition includes a list of the integrated circuit hardware cells needed

18   to achieve the functional specifications. These cells are selected from a cell library of

19   ***previously designed*** hardware cells of various functions and technical specifications." Ex.

20   1 at 2:34-39 (emphasis added).

21   • "PSCS also includes a cell selector 32 for selecting the cells required for system design.

22   The cell selector 32 selects from a cell library 34 of ***previously designed*** hardware cells the

23   appropriate cell or cells required to perform each action and condition represented in the

24   flowchart." Ex. 1 at 4:66-5:3 (emphasis added).

25   Thus, the hardware cells must be complete structures such as adders capable of performing the

26 desired actions and conditions to be performed by the ASIC.

27   Consistent with this interpretation, the '432 specification states that one advantage of the '432

28 invention is that it does not require hardware cells to be built from scratch:

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1   Rather than generating every required hardware cell from scratch, the system draws upon a cell

2   library 34 of previously designed, tested and proven hardware cells of various types and of various functional capabilities with a given type.

3   Ex. 1 at 5:16-20. This can be contrasted with the Design Compiler system, which does not use pre-

4   designed hardware cells, but instead must build up each hardware cell from scratch using the simple

5   logic gates contained in the Target Technology libraries. Casavant Decl. ¶ 25.

6   Moreover, this is consistent with the figures of the patent. For example, Figure 4 clearly

7   captures the concept. It shows large functional blocks in the cell library as corresponding to the

8   definitions. In addition, the '432 specification states that "FIG. 6 illustrates the results of mapping the

9   flowchart of FIG. 5 onto hardware cells." Ex. 1 at 6:28-29. FIG. 6 from the '432 patent is reproduced

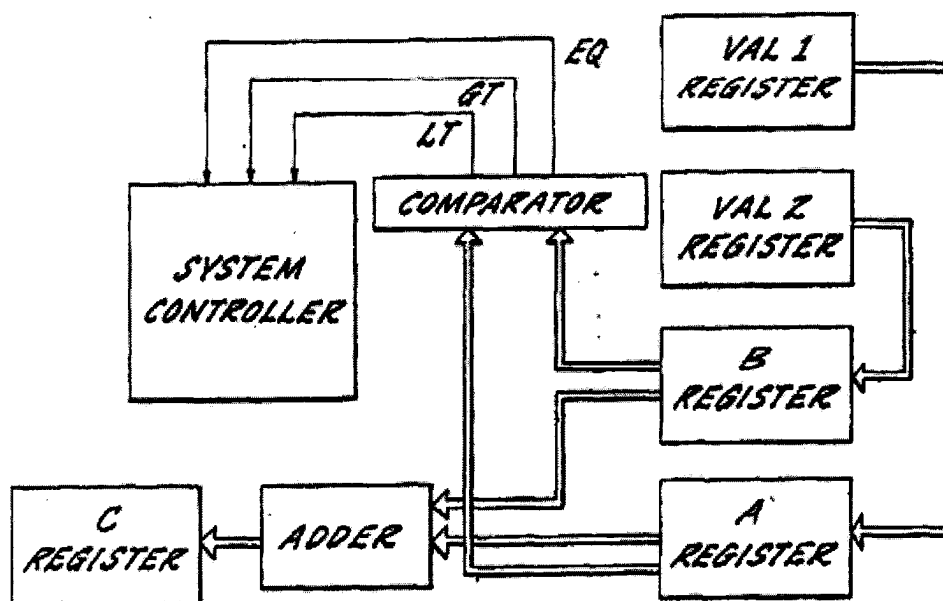10   below:

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FIG. 6.

24   Ex. 1 at Sheet 4. FIG. 6 clearly shows block diagrams of several registers, an adder, a comparator, and

25   a system controller. FIG. 6 therefore provides further evidence that the term "hardware cells" in the

26   '432 patent means complete circuit structures such as adders capable of performing the described

27   actions and conditions.

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1   Moreover, the fact that more than one cell may be selected as corresponding to a definition

2 does not change this. Indeed, consider the following excerpt from the example described in the '432

3 patent:

4   FIG. 11 illustrates for each of the macros used in the flowchart of FIG. 10, the corresponding
     hardware blocks. It will be seen that the comparison macro CMP (A,B) results in the
5   generation of a register for storing value A, a register for storing value B, and a comparator
     block and also produces control paths to the system controller for the EQ, LT, and GT signals
6   generated as a result of the comparison operation. The addition macro ADD (A,B,C) results in
     the generation of a register for each of the input values A and B, a register for the output value
7   C, and in the generation of an adder block. The macros DECR (A) results in the generation of
     a counter block. The PSCS program 30 maps each of the macros used in the flowchart of FIG.
8   10 to the corresponding hardware components results in the generation of the hardware blocks
     shown in FIG. 12. In generating the illustrated blocks, the PSCS program 30 relied upon rules
9   1 and 2 of the above listed example rules.

10 Ex. 1 at 13:36-54.

11   In this example, there is a "hardware cell" that corresponds to each of the functions described

12 by the macros. For the CMP macro, a comparator block is selected; for the ADD macro, an ADD

13 block is selected; etc. That other hardware cells, also previously designed hardware components, also

14 result from a macro does not change the fact that a hardware cell corresponding to a function is

15 selected.

16   The '432 specification is entirely consistent with Defendants' understanding that that the term

17 "hardware cells" in the '432 claims means pre-designed structural components corresponding to the

18 specified functions for the ASIC.

19   **B.   The Target Technology Libraries Do Not Contain Hardware Cells**

20   Thus, the question for infringement is: do the objects stored in the Target Technology libraries

21 correspond to and have the capability to perform the specified functions (actions and conditions) for

22 the ASIC? For example, where the specified function is "add," does the Target Technology library

23 contain an object that corresponds to and is capable of performing that "add" function?

24   Defendants' expert, Dr. Casavant, says the answer to these questions is no because the simple

25 logic gates that are present in the Target Technology libraries do not correspond to and are not capable

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1 of performing functions such as "add." Casavant Decl. ¶¶ 24-29.[5] Instead, these simple logic gates

2 constitute the building blocks from which one can create a structure capable of performing functions

3 such as "add." *Id.*

4   Ricoh's response is that Dr. Casavant is wrong because the Target Technology libraries contain

5 "macrocells" in addition to simple logic gates. Opp. at 4-6. But even if Ricoh is correct on this point,

6 this simply begs the question: do these alleged "macrocells" in the Target Technology libraries

7 correspond to and have the capability to perform the specified functions in the ASIC? Neither Ricoh

8 nor its expert ever addresses this question. Instead, they simply assume in a conclusory fashion that

9 storing "macrocells" meets the requirements of element B. A party cannot rely on conclusory opinions

10 from its expert witness to avoid summary judgment, however. *On-Line Technologies, Inc. v.*

11 *Bodenseewerk Perkin-Elmer GMBH*, 386 F.3d 1133, 1144 (Fed. Cir. 2004); *Arthur A. Collins, Inc. v.*

12 *Northern Telecom Ltd.*, 216 F.3d 1042, 1046 (Fed. Cir. 2000); *United States v. Various Slot Machines*

13 *on Guam*, 658 F.2d 697, 700 (9th Cir. 1981).

14   Moreover, another reason the "hardware cells" in the Target Technology Library do not meet

15 the hardware cells limitation is that they do not contain the information described in the specification.

16 Although the Court need not resolve the issue of whether or not "geometrical data" is present in the

17 Target Technology libraries in order to find summary judgment of non-infringement, Ricoh is wrong

18 in assertions about geometric data and its position is inconsistent for validity and infringement.

19 Indeed, Dr. Soderman declares that one of ordinary skill in the art would understand geometric data to

20 include attributes such as width, height, technology, etc. Again here, Dr. Soderman's opinion on this

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23 [5] Ricoh incorrectly argues that Dr. Casavant's opinions are so conclusory that they fail to meet Defendants' initial burden
on summary judgment. As explained in his declaration, Dr. Casavant's opinion that the Target Technology libraries do not

24 contain "hardware cells" is based on his analysis of two exemplary technology libraries, one of which is used in one of
Defendants' accused designs (amia250xxsc2_max.lib). Casavant Decl. ¶¶ 24-29. Dr. Casavant's opinion, the factual basis

25 of which is clearly explained in his declaration, is sufficient to meet Defendants' initial burden on summary judgment. *See
Jespersen v. Harrah's Operating Co.*, 392 F.3d 1076, 1079 (9th Cir. 2004) ("Where the moving party is not the party

26 bearing the burden of proof at trial, it can meet its initial burden simply by identifying those portions of the pleadings,
depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes

27 demonstrate the absence of a genuine issue of material fact."); *Bhan v. NME Hospitals, Inc.*, 929 F.2d 1404, 1409 (9th Cir.
1991) (party seeking summary judgment "does not necessarily need to put on evidence to negate his opponent's claim").

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1   is not relevant and the patent makes clear that geometric data is "mask data." There is no dispute that

2   the "hardware cells" in the Target Technology Library do not have this data.[6]

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[6] Dr. Soderman's assertions regarding the logic and functional descriptions is likewise wholly without merit. Dr. Soderman

27   asserts that the logic information in the technology libraries are the input and output ports, but does not offer any
    explanation to support this clearly misguided assertion.

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5   **D.   Ricoh's Argument That The "Cell Selection Rules" Do Not Need To Be Applied Is**

6   **Contrary To the Plain Language Of The Claims**

7   Finally, Ricoh's argument that the "cell selection rules" need not be applied directly to the

8   specified definitions of actions and conditions is meritless. That the cell selection rules must be

9   applied to the specified definitions is the plain language of element F, which recites selecting hardware

10   cells by "*applying to the specified definition* of the action or condition to be performed, a set of cell

11   selection rules." Ex. 1 at 16:57-59 (emphasis added). The Court construed this language to mean

12   "mapping of the specified definitions to the stored hardware cell descriptions by *applying to the*

13   *specified definitions* a set of cell selection rules." Ex. 8 at 20:16-21-4 (emphasis added).[7] Thus, both

14   the language of the claim and the language of the Court's construction are clear: the cell selection rules

15   must be applied to the specified definitions of actions and conditions.

16   Ricoh, however, contends that "applying to the specified definitions" means something other

17   than "applying directly to the specified definitions." Specifically, Ricoh argues that it means "the rules

18   are applied to a circuit manifestation of the macros [*i.e.*, the specified definitions of actions and

19   conditions]." Opp. at 8:3-15. Thus, Ricoh would have the Court interpret "applying to the specified

20   definitions" to mean "applying to circuit manifestations of the specified definitions," which in truth

21   means that the definitions are no longer around when the rules are applied. This requires not only

22   rewriting the plain language of the claim, but also completely ignores the Court's claim construction.

23   The Court should not rewrite the language of claim 13 in such a fashion. The words of the

24   claim are clear on their face and require no further interpretation. *See Renishaw PLC v. Marposs*

25   *Societa' per Azioni*, 158 F.3d 1243, 1248 (Fed. Cir. 1998) ("the claims define the scope of the right to

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[7] Notably, Ricoh conveniently omits this portion of the claim construction throughout its opposition brief whenever it
discusses the selecting step. *See* Opp. at 2; 23-24.

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1 exclude; the claim construction inquiry, therefore, begins and ends in all cases with the actual words of

2 the claim"); *Texas Digital Sys., Inc. v. Telegenix, Inc.*, 308 F.3d 1193, 1202 (Fed. Cir. 2002) ("The

3 terms used in the claims bear a 'heavy presumption' that they mean what they say . . ."); *see also*

4 *Southwall Technologies v. Cardinal IG Co.*, 54 F.3d 1570, 1578 (Fed. Cir. 1995) ("A patentee may not

5 proffer an interpretation for the purposes of litigation that would alter the indisputable public record

6 consisting of the claims, the specification and the prosecution history, and treat the claims as a 'nose of

7 wax.'") (citation omitted).

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13   Dissatisfied with the plain language of claim 13, Ricoh argues that Defendants' reading of the

14 claim is incorrect because it would exclude the preferred embodiment in the patent. Opp. at 23-24. In

15 effect, Ricoh argues that if the Court reads claim 13 in accordance with its plain language, Ricoh has

16 an inadequate written description problem. *See, e.g., LizardTech, Inc. v. Earth Res. Mapping, Inc.*, 424

17 F.3d 1336, 1346 (Fed. Cir. 2005) (patent claim invalid because description of one method for

18 compressing digital images did not entitle patentee to claim any and all means for achieving that

19 objective); 35 U.S.C. § 112 ¶ 1. The fact that the '432 patentee may have drafted the claims in such a

20 way as to render the claims invalid, however, is not what controls in claim construction. Although it is

21 true that claims are generally construed so as to sustain their validity if possible, the court may not

22 construe a claim differently from its plain meaning to preserve its validity. *See Elekta Instrument S.A.*

23 *v. O.U.R. Sci. Int'l, Inc.*, 214 F.3d 1302, 1309 (Fed. Cir. 2000) ("having concluded that the amended

24 claim is susceptible of only one reasonable construction, we cannot construe the claim differently from

25 its plain meaning in order to preserve its validity"); *Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed.

26 Cir. 1999) ("We, too, have consistently employed the caveat, 'if possible,' to our instruction that

27 claims should be construed to sustain their validity. . . . We have also admonished against judicial

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1   rewriting of claims to preserve validity."); *Allen Eng'g Corp. v. Bartell Indus., Inc.*, 299 F.3d 1336,

2   1349 (Fed. Cir. 2002) ("It is not our function to rewrite claims to preserve their validity.").[8]

3   **III.   CONCLUSION**

4   For the foregoing reasons, summary judgment of noninfringement should be granted.

5   Dated: September 8, 2006   Respectfully submitted,

6   HOWREY LLP

7

8   By: _____*/s/Denise M. De Mory*_____

9   Denise M. De Mory
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12   INTERNATIONAL CORP., MATROX
                                                        TECH, INC., and AEROFLEX

13   COLORADO SPRINGS, INC.

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22   [8] Defendants reserve the right to assert that the patent is invalid for lack of adequate written description, but assert that it is
     not even clear that Ricoh is correctly reading the specification. It is possible that Defendants' reading of element F does not

23   actually exclude the preferred embodiment in the patent. Ricoh attempts to read in as a requirement of element F all of the
     detailed steps recited in columns 9 and 10 of the specification, but Ricoh ignores that this portion of the specification

24   discusses performing the following actions to the blocklist: "map arguments to data paths / map actions to macros / connect
     these blocks." Ex. 1 at 9:13-19. This suggests strongly that the blocks in the blocklist are both macros and datapaths, or at

25   least have macros and datapaths associated with them. Under Ricoh's reading of the specification, however, this would
     mean that the cell selection rules *are* applied directly to macros to the extent that macros are present in the blocklist.

26   Moreover, cell selection as described in the specification apparently can be made using macro names. Ex. 1 at 9:52-55.
     Thus, even if there are other steps disclosed in the preferred embodiment, it is not clear that the preferred embodiment is

27   inconsistent with Defendants' reading of element F. The Court need not resolve this issue now, however, as it is not
     controlling with respect to the present motion, as discussed above.

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